



## UNITED STATES DEPARTMENT OF COMMERCE

## Patent and Trademark Offic

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/462,224	01/03/00	JANSSENS	M 702-991961

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EXAMINER

JULES, F

ART UNIT	PAPER NUMBER
3617	

DATE MAILED: 09/18/00 6

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/462,224	JANSSENS, MARCEL HENK ANDRE
	Examiner Frantz F. Jules	Art Unit 3617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 8-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 8-14 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - a) All b) Some \* c) None of the CERTIFIED copies of the priority documents have been:
    1. received.
    2. received in Application No. (Series Code / Serial Number) \_\_\_\_\_.
    3. received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

#### Attachment(s)

- |  |  |
|--|--|
| 15) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                             | 18) <input checked="" type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                    | 19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)           |
| 17) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 20) <input type="checkbox"/> Other: _____  |

## SUPPLEMENTAL DETAILED ACTION

1. It was noticed that paragraph number 5 in the previous office action had Heinrich cited mistakenly instead of Lesley which anticipates the limitations of claims 8-9, 13-14. The present will address this deficiency, and, in addition, substitute the rejection of claim 14 under 102 by a 103 rejection in a separate paragraph using Lesley combined with Hendrik et al.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 8-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 8, line 3, the phrase "the rail" is confusing as it is unclear which particular one of the numerous rails recited above, applicant is referring to.

Claim 8 recites the limitation "the head of the rail" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim 8 recites the limitation "the foot of the rail" in line 7. There is insufficient antecedent basis for this limitation in the claim.

In claim 8, lines 7-8, the phrase "the surface between the running surface and the bearing surface of the rail" is confusing as it is unclear which particular structure, applicant is referring to.

In claim 11, line 2, the phrase "the one side of the rail" is confusing as it is unclear which particular one of the numerous sides of the rail, applicant is referring to.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 8-12, 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Ortwein.

Claims 8-12, 14

Ortwein teaches all the limitations of claims 8-12, 14, by showing in figs. 1-7, a rail track comprising at least two parallel rails (3) supported by a non-compressible base body (6) provided with a channel-like recess (4) for receiving the rails (3) such that the running surface of the head of the rail lies free, with the bottom of the channel-like recess provided with a first layer of yielding material (9) which extends under the bearing surface of the foot of the rail, and with the side surfaces of the rails (3) covered with a second layer (4) of yielding material, wherein the space between the second layer (24) and the channel like recess is filled with a filler body of non-compressible material (17), the second layer has a greater stiffness than the first layer as the sizes are different with asymmetrical cross-section; the elastic material being used as sound-absorbing material, see columns 1-4, lines 1-68.

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6. Claims 8-9, 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Lesley.

Claims 8-9, 13

Lesley teaches all the limitations of claims 8-9, 13 by showing in figs. 1-4 a rail track comprising at least two parallel rails (11) supported by a non-compressible base body (26) provided with a channel-like recess (28) for receiving the rails (11) such that the running surface of the head of the rail lies free, with the bottom of the channel-like recess provided with a first layer of yielding material (18) which extends under the bearing surface of the foot of the rail, and with the side surfaces of the rails (11) covered with a second layer (12) of yielding material, wherein the first and/or second layer of yielding material is interrupted and the space between the second layer (12) and the channel like recess is filled with a filler body of non-compressible material, see abstract section.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lesley in view of Hendrix et al.

Claim 14

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Lesley teaches all the limitations of claim 14 except for a rail track having the upper side of the base body covered with a layer of sound absorbing material. Hendrik et al teach the use of the upper side of a base body covered with a layer of sound absorbing material in a rail track assembly, see the attached foreign abstract. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Lesley to include the use of a the upper side of the base body covered with a layer of sound absorbing material in his advantageous rail track assembly as taught by Hendrik et al in order to improve the efficiency of the system by providing noise attenuation protection, increase the safety level in the system by reducing the risk of damaging passenger's ears due to high noise level.

***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantz F. Jules whose telephone number is (703) 308-8780. The examiner can normally be reached on Monday-Thursday and every other Friday from 07:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph S. Morano, can be reached on (703) 308-0230. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

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Frantz Jules  
Patent Examiner  
Art Unit 3617

FFJ

September 14, 2000

  
S. JOSEPH MORANO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600